



OFF PAYROLL WORKING FROM APRIL 2020: TRANSFER OF PAYE LIABILITY ET AL: DRAFT PAYE AND SOCIAL SECURITY CONTRIBUTIONS REGULATIONS

Issued 19 February 2020

ICAEW welcomes the opportunity to respond to the **off-payroll working rules from April 2020 draft secondary legislation** technical consultation published by HMRC on 22 January 2020.

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CONTENTS

- A EXECUTIVE SUMMARY
- B EXTENDING OFF-PAYROLL WORKING RULES TO PRIVATE SECTOR
- C TRANSFER OF LIABILITY
- D OFF PAYROLL WORKER MARKER
- E THE POLICYMAKING PROCESS

A EXECUTIVE SUMMARY

1. The draft regulations published on 22 January 2020 are poorly drafted. HMRC's incomplete guidance does not align with the draft law. The consultation process has been problematic, which has not been helped by the extended period of political uncertainty.
2. The draft legislation and guidance and its implementation do not comply with our *Ten Tenets for a Better Tax System* (summarised in Appendix 1) by which we benchmark the tax/NIC system and changes to it.
3. Despite the absence of final legislation, guidance and software specifications, businesses have been preparing for changes to the off-payroll working (OPW) rules beginning on 6 April 2020. Press reports indicate that costs incurred by these businesses to be compliant with the new rules are already considerably in excess of the £14.1m estimated by HMRC.
4. In view of the resources that businesses have put into preparing, we see problems with delaying implementation at this late stage, although such a decision could have been taken many months ago. If the change is to go ahead from 6 April 2020, we should welcome an assurance that HMRC will be proportionate in its response to non-compliance during the first year or two of the new system.
5. In the meantime we await the outcome of the [Treasury off-payroll working \(OPW\) review](#) and the [House of Lords Economic Affairs Committee Finance Bill Sub-committee review](#).
6. As we have previously recommended, the need for the OPW regime could be eliminated if a long term solution such as removing or reducing the NIC cost imbalance between different types of employment status could be agreed.
7. As to the draft secondary legislation, regarding those draft social security contributions regulations (SSR) which amend and extend the OPW regime, many of our comments below are the same as we made on the draft Finance Bill in our response [ICAEW REP 86/19](#). The executive summary of this is reproduced in Appendix 2: most of it remains valid. Our main recommendations on these provisions in the SSR are:
 - a) information flows need to be improved. There should be specific obligations on:
 - i. all clients to notify those they contract with and workers as to whether or not they are small,
 - ii. small private sector clients to remind workers that they (ie, workers) are responsible for applying IR35 rules,
 - iii. public sector and non-small private sector clients to send a status determination statement to those they contract with and workers in all cases, ie, whether or not the worker is a deemed employee, and
 - iv. workers to forward to the fee-payer the SDS that the client gives them;
 - b) client-led disagreement process: in the interests of certainty we suggest that there should be a backstop deadline of 45 days from receipt of the status determination statement by when the worker or deemed employer must make representations to the client if they disagree with it, but this will not prevent the worker from completing their self-assessment return on the basis of not being a deemed employee. Clarification is also needed on the appropriate process when the worker disagrees with a reconfirmed SDS; and

- c) deadline for reporting under PAYE real time information: a period of grace of a tax month is needed after the end of the tax month in which payment is made to allow for mismatches between payroll and invoice payment dates;
8. As to the transfer of liability and recovery of PAYE provisions in the draft PAYE income tax regulations (ITR) and SSR our main recommendations include:
 - a) these measures should be dealt with in primary not secondary legislation;
 - b) it is not right that a party that has acted with due diligence should be penalised and this should be a ground of appeal;
 - c) HMRC should operate strict safeguards similar to those that apply when the NIC of a company is to be made the personal liability of its director(s), eg a high level of negligence and the decision is made by a specialist unit;
 - d) recipients of recovery notices need to be able to appeal both whether there has been a default and the amount of the debt, because if HMRC has had to rely on estimates, the figures in the recovery notice may be seriously inaccurate;
 - e) we should welcome clarification of how the recovery process will work in practice;
 - f) where the client and top agency have fulfilled all their obligations and the contractor's personal service company (PSC) has been paid gross because PAYE has not been deducted by the fee payer, then the contractor should be liable for the income tax and employee NIC based on the amount received by the PSC;
 - g) "realistic prospect" and "a reasonable period of time" need to be explained in the legislation;
 - h) recovery notices need to include a date of issue, reasons for the decision, and say by when it is payable, how to pay and that it is appealable and explain how to appeal;
 - i) a deadline, of say 30 days, is needed by when HRMC must inform the recipient of a recovery notice that they have withdrawn it.
9. We welcome the off-payroll worker marker in the ITR and would welcome clarification of what it will do at the government's end.

B. EXTENDING OFF-PAYROLL WORKING RULES TO THE PRIVATE SECTOR – Soc Sec regs (SSR) only

The measure

10. The draft social security contributions regulations (SSR) amend and extend certain aspects of the public sector off-payroll working rules to the private sector. They include
 - the definition of a small client,
 - provision by clients of employment status determination statements (SDS),
 - who is treated as the secondary contributor, and
 - a client-led disagreement process.
11. It is intended that the income tax aspect of the matters covered in the draft SSR will be included in a Finance Bill, for which draft legislation was published in Summer 2019 and on which we commented in [ICAEW REP 86/19](#).

General comments

12. As mentioned in previous representations, these measures are operationally onerous and carry a considerable compliance cost. The better solution in the longer term would be to address the NIC cost imbalance between different types of employment status. Please refer to our comments on the draft Finance Bill legislation [ICAEW REP 86/19](#). We have included a copy of the executive summary in Appendix 2.

Recommendations to improve information flows and therefore compliance

13. Where the client gives a contractor an SDS saying that the contractor is a deemed employee, the contractor should be obliged to pass a copy of the SDS to the fee payer. We note that the contractor already has an obligation to provide information to the fee payer

under regulation 21 so providing a copy of the SDS should not prove too much of an additional burden. This will alert the fee payer to their potential obligation to account for PAYE on that contractor's fees and they can investigate why they have not received an SDS from the party above them in the chain.

14. In many cases, an innocent error may have prevented the fee payer from receiving the SDS, for example an employee in an agency in the chain to whom the SDS was sent may have been on leave and no one checked their email inbox.
15. Where the client is "small", the contractor's PSC will remain responsible for applying the April 2000 IR35 rules.
16. In the light of HMRC's published estimate that there is 90% non-compliance by contractors' PSCs, we recommend that "small" clients should be obliged to notify each of their contractors that:
 - they (the client) are "small", and
 - the contractor's PSC is responsible for operating the IR35 rules which involves inter alia determining deemed employment status and if appropriate accounting for PAYE.
17. Without such a notification the contractor will assume that the client has determined that they are outside IR35 and will not realise that they are responsible for making an employment status determination and if applicable accounting for PAYE. This "loophole" will make enforcement difficult for HMRC in subsequent years. This comment is based on the draft regulation the effect of which is to require an SDS only to be issued when the determination is within IR35. We believe that there are GDPR issues with issuing a SDS to other intermediaries and consequently believe the law should be amended to require the issue of a SDS when the contractor is outside IR35. This would also align the rules with those currently applying in the public sector (reg 20). We note however that the draft regulations (reg 2(12) SSR) will delete this by replacing reg 20 with a provision on the disagreement process.
18. In order to discourage umbrella companies and fee payers from making deductions from amounts payable to PSCs to cover for example the cost of employer NIC and apprenticeship levy, the cost of which should be borne by the client, we recommend that fee payers and umbrella companies should be obliged to provide payslips, in an easily accessible manner, to contractors who are deemed employees.

Detailed comments on the draft regulations

19. Reg 2 SSR – *Information flows, reasons for conclusions in SDS and disagreement process*: please see our recommendations in paras 32-33, 39-40 and 48-51 of our draft Finance Bill legislation response [ICAEW REP 86/19](#) which apply equally here.
20. Regs 2(9)-(13) SSR – *Status determination statement (SDS)*: we recommend that a contractor who has been notified in an SDS that they are a deemed employee should be obliged to give a copy of that SDS to their PSC's fee payer. In cases where the contractor is a deemed employee but the fee-payer has not received an SDS from the party above them in the labour chain, receipt of the SDS from the contractor would put the fee payer on notice that the contractor is a deemed employee and that they should be accounting for PAYE on fees, thereby alerting the fee payer to the need to find out why they have not received an SDS from the party primarily responsible for providing it to them, and to obtain an SDS from that party to give them the authority to deduct and account for PAYE.
21. Regs 2(9)-(13) SSR – *Status determination statement (SDS)*: Where the client is small, the contractor's PSC remains responsible for applying the IR35 rules which have applied since April 2000. HMRC's published estimates indicate that there is 90% non-compliance with the April 2000 IR35 rules, ie it is estimated by HMRC that only 10% of contractors' PSCs comply with these rules. If this is indeed the case, we recommend that there should be a requirement that small clients should be obliged to notify each of their contractors working through intermediaries like PSCs that:
 - they (the client) are small, and

- that the contractor's PSC is responsible for operating the IR35 rules which involves inter alia determining deemed employment status and if appropriate accounting for PAYE.
22. Without this "small" notification contractors will assume the end client has made a determination that they are outside of IR35. In order to reduce the burden on small clients, we suggest that HMRC makes available a suggested form of wording for this purpose. This point applies equally to para 5: new s60A-60G – *When a person qualifies as small for a tax year* of the draft Finance Bill clauses published in the summer (see paras 3(a)(i) and (ii) of ICAEW REP 86/19).
23. Reg 2(9)(b) SSR new reg 14(5) – *Information to be provided by clients and consequences of failure*: the explicit obligation in reg 20 Intermediaries Regs and reg 20 Northern Ireland Regs on clients to tell the party with whom they contract whether or not the contractor is a deemed employee is to be deleted. It is being replaced with a provision that says only that unless and until the client gives a status determination to the worker, the client must account for PAYE. This, as we said in our draft Finance Bill representation ICAEW RERP 86/19, is insufficiently explicit as it does not make it clear to clients exactly what else they are supposed to do. That is, that it fails to mention the explicit requirement also to give the SDS to the party with whom the client has contracted. This is clearly a fundamental requirement as it is only by doing that that the SDS will be sent on down the labour chain to the fee payer which needs to be notified of its obligation to account for PAYE.
24. We therefore recommend that an explicit requirement should be included in the legislation. We should also welcome clarification of why the explicit requirement has been removed rather than augmented to include as a recipient not only the person with whom the client has contracted, as in current reg 20, but also the worker.
25. Regs 2(7)-(9) SSR – *Medium or large clients - payslips*: where clients are not small and the contractor is a deemed employee, PAYE will need to be accounted for on the fees payable to the PSC. In order to discourage fee payers from making deductions from amounts payable to PSCs to cover for example the cost of employer NIC and apprenticeship levy, in addition to legal deductions of PAYE income tax and employee NIC, we recommend that the section 8 Employment Rights Act 1996 provisions which oblige employers to provide payslips to workers need to be extended to oblige fee payers to provide payslips, in an easily accessible manner, to contractors who are deemed employees under the off payroll working rules. This we believe should not prove burdensome as all payroll software packages produce a payslip as part of the gross to net process.
26. Reg 2(10) SSR new reg 14A – *Meaning of status determination statement*: we should welcome confirmation that provided the reasonable care has been taken with the inputs, the output from HMRC's check employment status tool (CEST) will be acceptable "reasons for that conclusion" and sufficient evidence to support having taken "reasonable care".
27. Reg 2(12) SSR new reg 20 – *Client-led disagreement process*: as noted in ICAEW REP 86/19, we recommend that a time limit of, say, 45 days from when the contractor receives the SDS should be the deadline for the contractor to appeal to the client. Further appeals should then only be allowed on the basis of new information or a change in circumstances.
28. Reg 2(12) SSR new reg 20 – *Client-led disagreement process*: we should welcome an explanation of why the wording in new reg 20 differs from that in new s61T of the draft Finance Bill, for example new reg 20(3) and new s61T(5). We consider that the drafting of reg 20 is an improvement over proposed new s61T; is it intended to amend s61T to match?

C TRANSFER OF LIABILITY – IT regs and Soc Sec regs

The measure

29. The draft PAYE income tax regulations (ITR) and the draft social security contributions regulations (SSR) are intended to enable HMRC to transfer the liability for and recover an unpaid off-payroll working PAYE debt from the end client or the party with whom the end

client has contracted where HMRC considers that there is no realistic prospect of recovering the debt from the secondary contributor primarily liable for the debt.

General comments

30. It is not right that a party should be penalised when it has itself acted properly, made it clear (through an SDS or otherwise) that a contract is within IR35 and paid the next party in the labour chain to operate the tax system properly. We believe that there ought at least to be a defence that due diligence has been undertaken.
31. What constitutes deliberate non-compliance is subjective. We recommend that there should be a safeguard similar to that in place for getting directors to pay their companies' NIC. In these cases, the level of negligence has to be high and a special unit in HMRC considers it rather than the officers responsible for issuing the decisions.
32. Where there is a transfer of debt, the transferee needs to have the right to appeal both on the principle as to whether there has been a default, and also regarding the amount of the default. This is particularly important as end clients and the agencies – the likely recipients of this sort of bill – can be expected to have the necessary information to come to a reasonably accurate figure, and the client will have made the status determinations. If the defaulter has been uncooperative and HMRC has to rely on estimates, the figures could be seriously inaccurate.
33. Where an employment status determination statement (SDS) saying that a contractor is a deemed employee has been issued to both to the party with whom the client contracted and also to the contractor, but PAYE has not been deducted from the fees paid to a contractor's personal service company (PSC), we consider that the PAYE income tax and primary, ie employee, national insurance contributions (NIC) that should have been deducted and accounted for by the fee payer should be collected from the contractor.
34. In similar circumstances, where the contractor has suffered deduction of PAYE but the fee payer has not paid the PAYE to HMRC, the contractor should not be liable.
35. The draft legislation could result in the client or the party with whom they have contracted effectively being liable twice for the amount of the income tax and employee NIC, first when they pass the gross fee down the chain for payment, and again on receipt of a recovery notice. Given that the contractor will have received their fee without tax and NIC having been deducted, but the contractor having been provided with an SDS saying that they are a deemed employee will know that PAYE should have been deducted, it is unfair that the client or the party with whom the client has directly contracted should be liable twice for these amounts with the contractor having received the money gross, ie without deduction of any tax and NIC.
36. We should also welcome further clarification, in addition to what is in HMRC's guidance at [ESM10031 et seq](#), of how the transfer of liability provisions are supposed to work in practice, for example:
 - Is the PAYE liability going to be established as someone's under a Regulation 80 determination with all the time limits that go with that with a further two year period in which HMRC may give a notice to the top agency in the chain or the client that they have to pay the tax, which under the law has been established as a liability of the top agency in the chain or the client?
 - Or will HMRC not have to issue a Regulation 80 determination for one of the reasons given, and then have two years to give a notice to the top agency in the chain or the client?
37. We should also welcome clarification of how the liability is appealed. It is not clear that a debt actually exists to be collected in the absence of a Regulation 80 determination.
38. As to appealing a recovery notice, we question whether the recipient will have enough information to allow it to exercise its rights under the very specific grounds of appeal listed. For example, if the recipient wanted to argue that they were not a "relevant person" they would presumably need to know how the PAYE debt arose. The recovery notice needs to

contain sufficient information to allow the recipient to identify down the labour chain the payment that they allegedly made.

Detailed comments on the draft regulations

39. Regs 2-3 ITR and reg 3 SSR – *Debts arising under Ch 10 Part 2 of ITEPA and Part 2 SSCR 2001*: the transfer of debt provisions are so serious that for both income tax and NIC they should be included in primary, not secondary, legislation.
40. Reg 3 ITR new reg 97LA and reg 3 SSR new reg 29LA – *Recovery from relevant person*: if the contractor has been paid gross and PAYE has not been deducted and the client has issued an SDS to both the party with whom they contracted (ie, the top agency in the chain) and also to the contractor and the top agency has passed the SDS down the labour chain then the client and top agency will have fulfilled their obligations. In such cases, HMRC should collect the tax and employee NIC on the amount that the PSC has been paid from the contractor. This is because the top agency or client will have already paid out amounts which include the PAYE liabilities.
41. In this event of the debt transferring to the contractor, reg 3 ITR new reg 97LB and reg 3 SSR new reg 29LB – relevant PAYE/contributions debt – needs to provide that the quantum of the PAYE income tax and employee NIC recoverable is calculated by reference to the amount actually received by the contractor's PSC.
42. Para 3 ITR new regs 97LA, 97LD, 97LG & 97LI and para 3 SSR new regs 29LA, 29LD, 29LG & 29LI – *Recovery from relevant person, Order in which debts may be recovered, Contents of recovery notice & Appeals*: we are concerned that there is no definition of "realistic prospect" and "a reasonable period of time". These are not phrases that appear in existing employment taxes or NIC legislation, therefore:
 - Against what criteria will HMRC benchmark what is realistic and reasonable for the purpose of these regulations?
 - How will the reasons behind the decision of the officer be evidenced?
 - How will the relevant person be able to appeal against the reasons?
 - Will HMRC use its existing powers under the personal liability rules to recover the PAYE debts from those who control the debtor organisation?
43. Given the need for the transfer of liability provisions to be certain, such points need to be covered in the legislation, not delegated to guidance. The draft legislation is also silent about when the notice is issued and payment terms.
44. We therefore recommend that the new regulations need to:
 - a) set out in detail criteria against which HMRC must benchmark what is a "realistic prospect" and "a reasonable period of time" for the purpose of these regulations,
 - b) provide that the reasons for the decision must be included in the recovery notice,
 - c) stipulate that the recovery notice states that it is appealable and explain how to appeal,
 - d) stipulate that the recovery notice must show the date of issue, by when it is payable and explain how to pay.
45. Para 3 ITR new reg 97LJ and para 3 SSR new reg 29LJ – *Withdrawal of recovery notice*: this is one of the few regulations that is easy to understand. We are disappointed that the rest of these draft regulations and the draft primary legislation are written in a style that is far removed from the spirit of and the lessons learned during the Tax Law Rewrite Project. We therefore recommend that the draft legislation be rewritten so that those who have to apply it can understand what it is saying.
46. Para 3 ITR new reg 97LJ and para 3 SSR new reg 29LJ – *Withdrawal of recovery notice*: we recommend that sub-regulation (3) stipulates that HMRC must inform the relevant person that they have withdrawn a recovery notice within 30 days of doing so.

D OFF PAYROLL WORKER MARKER – IT regs

The measure

47. The ITR provide that fee payers must, in PAYE RTI submissions, identify payments made to deemed employees.

Comment

48. Para 4 ITR new para 14AA Sch A1 PAYE Regs – *Real time returns*: we welcome the introduction of a deemed employee marker in payroll software specifications.
49. We should welcome clarification of what the marker will do at HMRC's end, for example in relation to student and post graduate loan repayments, universal credit, and statistical data.

E THE POLICYMAKING PROCESS

50. We are concerned that less than two months before this significant change comes into effect HMRC is only now (January-February 2020) inviting comments on draft secondary legislation. This draft secondary legislation, published in January 2020, appears to be no more choate than the draft Finance Bill provisions, published in July 2019.
51. Uncertainty is compounded by the fact that, as at 6 February 2020, HMRC's detailed guidance ([ESM10000](#)), intended to explain how businesses will be expected to comply, said only that "HMRC is committed to publishing an updated employment status manual reflecting the April 2020 reform changes as soon as possible". Although it has subsequently been updated, the guidance and draft law do not align.
52. HMRC other guidance, published and given in its webinars and in comments made during consultation meetings on the legislation, also does not align with the draft legislation. As we have not seen a revised Finance Bill, nor received feedback on our comments on the draft, it is very difficult to comment further. We do not know whether the draft Finance Bill will be amended or whether HMRC has rejected our suggestions.
53. We are also waiting for answers to our practical questions on cross-border issues and on operational matters submitted to HMRC in December 2019 (see [ICAEW REP 127/19](#)), and questions raised by software developers, many of which should have been answered three years ago before the public sector reforms came into force.
54. The absence of final legislation and detailed guidance is creating huge uncertainty and costs for UK plc. It also conflicts with our *Ten Tenets for a Better Tax System*, particularly Tenet 7: *Subject to proper consultation* which refers to the need to allow adequate time for drafting and consulting on legislation. Our Ten Tenets, by which we benchmark the tax system and changes to it, are summarized in Appendix 1.
55. We responded in detail on 5 September 2019 (in [ICAEW REP 86/19](#)) to HMRC's invitation to comment on draft Finance Bill (FB) legislation published on 11 July 2019. We are disappointed that there has been no feedback on the comments that we submitted. Appendix 2 below contains the text of ICAEW REP 86/19 executive summary.
56. We should welcome clarification of whether responses to the FB consultation have been taken into account when drafting the SSR, and clarification of when an official response to consultation comments and an updated version of the draft legislation will be published.
57. The absence of a track changes version of the legislation that is being amended makes it very time-consuming to work out what the amended legislation will say. As noted in our response on the draft FB [ICAEW REP 86/19](#), best practice when seeking technical comments on draft legislation that changes existing legislation would be to publish a track changes version of the legislation that is being changed alongside the draft legislation that is making changes.
58. We are grateful to HMRC for responding so quickly to our request for a copy of draft new section 488AA(3). However, the text of subsection (3) suggests that subsection (2) has been

revised as well. Best practice would have been to have included a revised version of all of proposed new s488AA as part of the package of draft secondary legislation on which comments were invited.

59. As recommended previously the need for the OPW regime could be eliminated if a long term solution, such as removing or reducing the NIC cost imbalance between different types of employment status, were adopted.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).

APPENDIX 2

TEXT OF EXECUTIVE SUMMARY IN OUR RESPONSE ICAEW REP 86/19 MADE ON 5 SEPTEMBER 2019 TO HMRC'S INVITATION DATED 11 JULY 2019 TO COMMENT ON DRAFT FINANCE BILL CLAUSES ON OFF-PAYROLL WORKING FROM APRIL 2020

1. The draft legislation is overcomplicated. Onerous responsibilities are allocated in an uncertain way to businesses in the labour supply chain. The start date needs to be delayed until April 2021 to enable all stakeholders properly to prepare on the basis of enacted legislation.
2. As mentioned in our previous representations, the underlying policy is a sticking plaster solution to a wider problem which needs a long term solution that does not impose excessive compliance burdens or incentivise one type of employment status over another.
3. As to the draft legislation we recommend as follows (the paragraph letters coincide with those on the subject headings in the body of this document):
 - e) information flows need to be improved and the legislation put into plain English to ensure that everyone in the labour chain is can understand what they are expected to do. There should be specific obligations on:
 - v. all clients to notify those they contract with and workers as to whether or not they are small,
 - vi. small private sector clients to remind workers that they (ie, workers) are responsible for applying IR35 rules,
 - vii. public sector and non-small private sector clients to send a status determination statement to those they contract with and workers in all cases, ie, whether or not the worker is a deemed employee, and
 - viii. workers to forward to the fee-payer the SDS that the client gives them;
 - f) reasons for conclusions in status determination statements and taking reasonable care: we should welcome confirmation that the output from HMRC's check employment status tool (CEST) will satisfy both these requirements, provided that reasonable care has been taken to ensure that inputs are accurate;
 - g) client-led disagreement process: in the interests of certainty we suggest that there should be a backstop deadline of 45 days from receipt of the status determination statement by when the worker or deemed employer must make representations to the client if they disagree with it, but this will not prevent the worker from completing their self assessment return on the basis of not being a deemed employee. Clarification is also needed for when the worker disagrees with a reconfirmed SDS;
 - h) recovery of PAYE to be dealt with in secondary legislation: what is proposed here should be consulted upon before the primary legislation is enacted. The proposals and draft secondary legislation should have been consulted upon alongside the draft FB legislation;
 - i) deadline for reporting under PAYE real time information: a period of grace of a tax month is needed after the end of the tax month in which payment is made to allow for mismatches between payroll and invoice payment dates;
 - j) as noted above, the commencement date needs to be put back to 6 April 2021 to give time for HMRC and businesses including software developers properly to prepare on the basis of enacted legislation, resolved operational issues and final IT specifications, CEST and guidance, and an early announcement made to this effect; and
 - k) we would welcome a clear statement in the law that where all services under a contract have been completed before the commencement date of the new rules, the new rules do not apply to that contract and, for contracts uncompleted at commencement date, clarification is needed on whether or not public sector clients need to issue SDS even when they have complied with current information requirements.

4. Detail is key, but too many operational points remain unresolved even though the public sector regime has been in force since April 2017. We are discussing the operational uncertainties with government separately so, despite their importance, they are not covered further in this response.
5. Providing technical comments on the proposed legislation has been hampered by the absence of a tracked changes version of the current legislation that is being amended. Best practice when inviting comments would be to publish such a document as part of the consultation package, and alongside Finance Bills.